

Montana Water Court
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FILED
04/04/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-0687-R-2023
Nordlund, Julia
2.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: David L. Jessen; Holly J. Hessen

CASE 41H-0687-R-2023
41H 110328-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. 41H 110328-00 in this case appeared in the Preliminary Decree for Basin 41H with Montana Department of Natural Resources and Conservation (DNRC) issue remarks questioning the point of diversion. The claims received no objections but Claimant filed a Motion to Amend on January 18, 2023. The claim is consolidated into case 41H-0687-R-2023.

2. Claimant asserts the pre-1973 point of diversion for claim 41H 110328-00 should be corrected to a headgate located in the SWNENE Sec. 10, Twp. 1N Rge. 4E.

3. Claimant submitted an Affidavit from William Skinner¹ with maps supporting the changes requested.

4. Claim 110328-00 should be changed as follows:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	SWNENE	NENWNE	10	1N	4E	GALLATIN
Period of Diversion: MAY 1 TO NOVEMBER 1						
Diversion Means: PUMP Headgate						
Ditch Name: Hoffman Ditch						
Period of Use: MAY 1 TO NOVEMBER 1						

CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v.*

¹ Mr. Skinner rented the underlying place of use for this claim from 1965-1967 and then farmed the adjoining property since 1974.

Burkhartsmeyer et al., Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master’s Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as “a relatively modest standard that the statutory criteria are ‘more probable than not’ to have been met.” *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

5. The Objection List issued in this basin gave all water users notice of the possible correction of the elements addressed in this Master’s Report. This notice is reasonably calculated to inform parties of proceedings affecting their water rights.

6. For the above-mentioned reasons, the claim in this case should be modified as shown on the attached abstract to accurately reflect historical use.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified above to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm that the recommended changes have been made in the state’s centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

David L. Jessen
Holly J. Jessen
PO Box 560
Belgrade, MT 59714-0560

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 110328-00 STATEMENT OF CLAIM

Version: 8 -- POST DECREE

Status: ACTIVE

***Owners:** DAVID L JESSEN
PO BOX 560
BELGRADE, MT 59714 0560

HOLLY J JESSEN
PO BOX 560
BELGRADE, MT 59714 0560

Priority Date: JUNE 1, 1869

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** 210.38 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 13.00

Source Name: STORY CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	10	1N	4E	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: HOFFMAN DITCH

Period of Use: MAY 1 TO NOVEMBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	13.00		S2NE	10	1N	4E	GALLATIN

Total: 13.00

Remarks:

SPLIT CLAIM NO. 41H 30066062 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.